

**IN THE CIRCUIT COURT OF GREENE COUNTY
STATE OF MISSOURI**

STATE OF MISSOURI, ex rel.)	
Attorney General Chris Koster,)	
)	
Plaintiff,)	Case No.
)	
vs.)	Division:
)	
YODER ENTERPRISE)	
SERVICES, LLC)	
)	
Serve Registered Agent:)	
Merlin Yoder)	
2914 W Crestwood)	
Ozark, Missouri 65721)	
)	
and)	
)	
MERLIN YODER,)	
an individual)	
)	
Serve at:)	
2914 W Crestwood)	
Ozark, Missouri 65721)	
)	
)	
Defendants.)	

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTIONS,
RESTITUTION, CIVIL PENALTIES, AND OTHER COURT ORDERS**

Plaintiff, State of Missouri, at the relation of Attorney General Chris Koster, brings this Petition for Preliminary and Permanent Injunctions, Restitution, Civil Penalties, and Other Court Orders against Yoder Enterprise Services, LLC and Merlin Yoder, an individual, (collectively

“Defendants”), and upon information and belief states as follows:

PARTIES

1. Chris Koster is the duly elected, qualified, and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to Chapter 407, RSMo 2010.¹

2. Defendant Yoder Enterprise Services is a limited liability company registered with the Missouri Secretary of State. Its registered agent is Merlin Yoder, with a listed address of 2914 Crestwood, Ozark, Missouri 65721 and has done business in Strafford, Greene County, Missouri.

3. Defendant Merlin Yoder (“Yoder”) is an individual that resides at 2914 Crestwood, Ozark, Missouri 65721 and has done business in Strafford, Greene County, Missouri.

4. Any acts, practices, methods, uses, solicitations, or conduct of the Defendants alleged in this petition include the acts, practices, methods, uses, solicitations, or conduct of Defendants’ employees, agents, or other representatives acting under their direction, control, or authority.

JURISDICTION

5. This Court has subject matter jurisdiction over this action under

¹ All references are to Missouri Revised Statutes 2010, unless otherwise noted. Where a citation gives a supplement year—*e.g.* “(Supp. 2011)” —the citation is to the version of the statute that appears in the corresponding supplementary version of the Missouri Revised Statutes, and, where relevant, to identical versions published in previous supplements.

Art. V, § 14 Mo. Const. and § 407.010 et. seq., which allows the Attorney General to seek injunctive relief and civil penalties for violations of § 407.020.

VENUE

6. Venue is proper in this Court pursuant to § 407.100.7, which provides that “[a]ny action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.”

7. Defendants have advertised, marketed, and offered for sale home repair and construction services in Stafford, Greene County, Missouri, and have engaged in the acts, practices, methods, uses, and conduct described below in violation of § 407.020 in Stafford, Greene County, Missouri, among other Missouri locations.

MERCHANDISING PRACTICES ACT

8. Section 407.020 of the Merchandising Practices Act provides in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in

section 407.453, in or from the state of Missouri, is declared to be an unlawful practice.... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

9. “Person” is defined as “any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.” § 407.010(5).

10. “Merchandise” is defined as “any objects, wares, goods, commodities, intangibles, real estate, or services.” § 407.010(4).

11. “Sale” is defined as “any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit.” § 407.010(6).

12. “Trade” or “commerce” is defined as “the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms ‘trade’ and ‘commerce’ include any trade or commerce directly or indirectly affecting the people of this state.” § 407.010(7).

13. Defendant has advertised merchandise in trade or commerce within the meaning of § 407.010.

14. Pursuant to authority granted in § 407.145, the Attorney General has promulgated rules explaining and defining terms utilized in §§ 407.010 to 407.145 of the Merchandising Practices Act. Said rules are contained in the Missouri Code of State Regulations (CSR). The rules relevant to Plaintiff's Merchandising Practices Act allegations include, but are not limited to, the provisions of 15 CSR 60-3.010 to 15 CSR 60-14.040. These rules are adopted and incorporated by reference.

ALLEGATIONS OF FACTS RELEVANT TO ALL COUNTS

15. From at least August 2013 to present, Defendant sold home repair and construction services to Missouri consumers.

16. Defendants contracted with consumers to provide home repair or construction services in exchange for an upfront payment.

17. Defendants failed to provide the goods or services stated in the contract.

18. Defendants accepted at least \$8,000.00 from one consumer for goods and services not provided.

19. As of the date of this petition, Defendants have not provided the goods or services or refunded the consumer.

Consumer Example

20. Jeremy French contracted with Defendants to construct an

addition to his home for approximately \$50,000.00.

21. Jeremy French paid Defendants an upfront payment of \$8,000 on August 19, 2014, with a personal check.

22. Defendants cashed French's check.

23. Defendants eventually showed up at French's home with a crew, and began to perform work, such as tearing off siding and pouring a small amount of concrete footing, lasting only a couple of weeks.

24. As of the date of this petition, only minimal work was performed by Defendants at French's home, and French had to contract with another company to get the contracted work completed.

25. As of the date of this petition, Jeremy French has called Defendants several times to request a refund, but has been unable to reach them and has not received a refund.

VIOLATIONS

COUNT I- FALSE PROMISE

26. Plaintiff incorporates all allegations stated above.

27. Defendants have engaged in conduct that violates § 407.020 by falsely promising to provide home repair and construction services to consumers, which was false or misleading as to Defendants' intentions or ability to perform the promise or the likelihood the promise would be performed.

COUNT II - DECEPTION

28. Plaintiff incorporates all allegations stated above.

29. Defendants have engaged in methods, acts, uses and practices of deception in connection with the sale of construction, remodeling and roofing services, in violation of § 407.020 by using the method, act, use, practice, advertisement or solicitation to consumers that construction and home remodeling services contracted would be provided according to the terms of the agreement, which had the tendency or capacity to mislead, deceive or cheat, or that tended to create a false impression.

RELIEF

WHEREFORE, Plaintiff prays this Court enter judgment:

A. Finding that the Defendants has violated the provisions of § 407.020.

B. Issuing a preliminary and permanent injunction pursuant to § 407.100 prohibiting and enjoining Defendants and their agents, servants, employees, representatives, and other individuals acting at their direction or on their behalf from:

- i. Owning, managing, operating, performing, offering, advertising, soliciting, or selling any home remodeling, home repair or construction services in the State of Missouri, except to the extent necessary to complete work

already paid for by Missouri homeowners;

- ii. Expending or otherwise disposing of any funds that Defendant received from Missouri homeowners as initial, up-front, or down payments for work that has not yet been completed.

C. Requiring Defendants pursuant to § 407.100.4 to provide full restitution to all consumers from whom Defendants have received monies and who have been aggrieved by the use of any of the unlawful, unfair or deceptive acts and practices alleged herein.

D. Requiring Defendants pursuant to § 407.100.6 to pay to the State a civil penalty in such amounts as allowed by law per violation of Chapter 407 that the Court finds to have occurred.

E. Requiring Defendants pursuant to § 407.140.3 to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against Defendants, or such other amount as the Court deems fair and equitable.

F. Requiring Defendants pursuant to § 407.130 to pay all court, investigative, and prosecution costs of this case.

G. Granting any additional relief that the Court deems proper in the premise.

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/ Kyle A. Poelker
Kyle A. Poelker
Assistant Attorney General
Missouri Bar No. 65586
P.O. Box 899
Jefferson City, MO 65102
Ph: (573) 751-4304
Fax: (573) 751-2041
kyle.poelker@ago.mo.gov

ATTORNEYS FOR PLAINTIFF